

*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION NO. 22312 of 2006

**% MONDAY, 6TH DAY OF NOVEMBER, TWO THOUSAND
SIX**

Narra Subhas Chandra Bose
S/o Venkata Krishnaiah, Hindu,
61 years, R/o Uppaluru, Kankipadu Mandal,
Krishna District.

... Petitioner

versus

\$ State of Andhra Pradesh, Department of
Revenue (Land Acquisition) rep. by its
District Collector, Krishna District, Machilipatnam.

...
Respondents

! Counsel for the petitioner : Ms. Sai Gangadhar
Chamarty

^ Counsel for the respondents : Government Pleader for
Land Acquisition

< Gist :

>Head Note:

? 1 AIR 1959 SC 648
2 AIR 1959 SC 749
3 AIR 1954 SC 752
4 AIR 1979 SC 89
5 AIR 1994 SC 169

: ORAL ORDER :

The petitioner claims to be the owner of an extent of Ac.0.48 cts, in Sy.No. 381/2-B of Uppaluru village, Kankipadu Mandal, Krishna District. The respondent issued a draft notification under Sec. 4(1) of the Land Acquisition Act 1894 ('the principal Act') on 11.06.2006 proposing acquisition of this land for the purpose of providing house sites to members of Scheduled Castes, Scheduled Tribes and Weaker Sections. This notification is assailed in this writ petition.

The learned counsel for the petitioner urged two grounds in support of this challenge : (a) that in as much as the notification has been issued by the District Collector, Krishna, the notification is invalid as the Collector is not competent to issue a draft notification under Sec.4(1); and (b) the notification is invalid as it was published in "The District Gazette" and not in "The Official Gazette".

Contention No.1 is eschewed by the learned counsel for the petitioner as it is conceded fairly that the District Collector, Krishna is competent to issue a draft notification under Sec.4(1) of the Principal Act.

The petitioner however persists with the second contention viz., that the notification is invalid as it was published only in The District Gazette and not what the petitioner contends is "The Official Gazette". The syllogism employed by the petitioner for this contention is rather involved.

The learned counsel for the petitioner contends that prior to the amendment to the principal Act by the A.P Amendment Act XXII of 1976 ('the AP Act') (w.e.f. 12.9.1975), a notification u/Sec. 4(1) was required to be published in "The Official Gazette". By the amendment under the AP Act a notification may also be published in "The District Gazette". Subsequent to the AP Act, the Land Acquisition (Amendment) Act 1984 ('the 1984 Act') amended Sec.4(1). By Sec.4(a) of the 1984 Act, the words "and in two daily news papers circulated in that locality of which at least one shall be in the regional language," was inserted after the words "Official Gazette", in the principal Act. Since the 1984 Act inserted the requirement of local press publication in the regional language, after the words "Official Gazette" in Sec. 4(1) of the Principal Act, it must follow and be held that the 1984 Act must be considered as having repealed the words "or the District Gazette" and restored the position as existed prior to the AP Act. Publication of a Sec.4(1) notification in the District Gazette is therefore not in compliance with the Act, is the contention.

In the considered view of this court the above contention is misconceived. The principal Act is a federal legislative instrument referable to a field of legislation enumerated in the Concurrent List in the Seventh Schedule of the Constitution. In view of Art. 246(2), the Parliament and the Legislature of a State may make laws with respect to any of the matters enumerated in the Concurrent List. The efficacy of such laws is however subject to the discipline mandated by Art. 254. As the territorial reach of the Principal Act is not circumscribed [except in relation to the State of Jammu & Kashmir – vide Sec.1(2)], in view of Art. 245 the principal Act operates through out the territory of India except the State of Jammu & Kashmir. Having regard to the

concurrency of the legislative field, the AP Act has amended the principal Act and enabled publication of the notification in the District Gazette. By the 1984 Act the Parliament has introduced several amendments to the principal Act. Sec.4(b) of the 1984 Act introduced the requirement of local news paper publication. Since the Parliament was amending the provisions of the principal Act, Sec.4(b) of the 1984 Act states that the words “and in two daily news papers circulated in that locality of which at least one shall be in the regional language” be inserted after the words “The Official Gazette”.

The question is whether the 1984 amendment above either expressly or by a necessary implication eclipses or repeals the words “or the District Gazette” in Sec. 4(1) of the principal Act as amended by the AP Act. It must be noticed that the AP Act and the 1984 Act are plenary expressions of legislative will expressed in the context of a concurrent though hierarchical Legislative architecture under our federal constitutional scheme. Both the enactments are exercises, one by the State Legislature and the later by the Union Legislature in the context of the concurrent legislative field. On text, authority or legislative practice, it is neither necessary nor the normal legislative drafting practice that a legislation either by the Parliament or by the Legislature of a State, expressly repeals the legislation of the other Legislature pre-existing in the concurrent field.

Art. 254 sets out the principles for harmonizing the laws made by the Parliament and by the Legislatures of States, referable to the concurrent field. Accordingly if the provisions of a law made by a State Legislature is repugnant to any provision of a law made by the Parliament which the Parliament is competent to enact, or to any provision of the existing law with

respect to one of the matters enumerated in the concurrent list, then, subject to the provisions of Art. 254(2), the law made by the Parliament, whether earlier or subsequent to the law made by the Legislature of a State, or an existing law, shall prevail and the laws made by the Legislature of the State shall, to the extent of repugnancy, be void.

The law made by the Legislature of a State with respect to any of the matters enumerated in the concurrent list will however prevail in that State, even if it contains any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter (of a concurrent field), if such State legislation has been reserved for the consideration of the President and has received His assent. The Parliament may however enact at any time a law with respect to the same matter including one which may amend, vary or repeal such State legislation [Art. 254(2)].

The AP Act enabled publication of a notification u/Sec. 4(1) of the principal Act in the District Gazette also. The AP Act having received the assent of the President (on 9.3.1976), its provisions prevail in the State, in view of Art. 254(2). The provisions of the 1984 Act do not expressly amend, vary or repeal the provisions of the AP Act. On settled principles of statutory interpretation and in the context of the legislative harmony and discipline spelt out in Articles 246 and 254, the provisions of the 1984 Act may however constitute an implied repeal of a provision of the AP Act, only if such provision (of the AP Act) is repugnant to any provisions of the 1984 Act. It is only the repugnancy of a provision of the AP Act with a provision of the 1984 Act that would bring about an implied repeal of such provision of the AP Act, even though there is no express repeal, amendment or variance by the 1984 Act.

The true test of repugnancy of a State law in the context of a concurrent field exercise is this: There should be a direct conflict between the two provisions such as where one cannot be obeyed without disobeying the other. Though the obedience to each of them may be possible without disobeying the other, there may still be inconsistency when the State legislative provision takes away a right conferred by the Union legislation even though the right be one which might be waived or abandoned without disobeying the Union legislation which conferred the right. Repugnancy may also arise whether both the laws operate in the same field and cannot possibly stand together. There can however be no question of a repeal by implication unless the inconsistency of the State law with the Union law appears on the face of the two statutes. There may also be a repugnancy though there may be no direct conflict between the Union and the State legislation, where it is evident that the Union legislation intended that it should be a complete and exhaustive code relating to the subject and therefore operates to replace the State legislation relating to the said subject. – *Deep Chand v State of U.P.* (^[1]); *Premnath Kaul v State of J&K* (^[2]); *Zaverbhai Amaldas v State of Bombay* (^[3]); *M.Karunanidhi v Union* (^[4]) and *Gaurishankar Gaur v U.P.* (^[5]).

The AP Act, was with respect to enabling publication of a notification u/Sec. 4(1) of the principal Act in the District Gazette, an official instrument. Section 4(b) of the 1984 Act was an amendment introducing the requirement of local news paper publication. The trajectory of these two legislative provisions (the AP Act and Sec. 4(b) of the 1984 Act are distinct. Sec. 4(b) of the 1984 Act does not therefore amount either to an express

or implied repeal of the provisions of the AP Act in so far as the AP Act enables publication of a notification under Sec.4(1) of the principal Act in the District Gazette.

On the above analysis the publication of the notification u/Sec. 4(1), in the District Gazette, suffers no infirmity.

For the aforesaid reasons the writ petition must fail and is accordingly dismissed at the stage of admission. In the circumstances there shall be no order as to costs.

Dated: 06-11-2006

LR Copy to be marked: Yes
(B/o)

Tsnr/Pvsn

Justice G.Raghuram

[\[1\]](#) AIR 1959 SC 648

[\[2\]](#) AIR 1959 SC 749

[\[3\]](#) AIR 1954 SC 752

[\[4\]](#) AIR 1979 SC 89

[\[5\]](#) AIR 1994 SC 169